

Serial No.: 09/701,271
Docket No.: BM45323

OM preparation. The Office Action asserts that the disclosed composition, i.e., whole cell lysates from *N. meningitidis* in buffer inherently comprise the amino acid sequence as set forth in SEQ ID NO:2. Applicants respectfully disagree. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in the reference (MPEP § 2131.01)

Claims 31, 39, 60, 62, and 65 recite an isolated, recombinant polypeptide. The claimed isolated, recombinant polypeptide is not disclosed or suggested by the OM preparations described in Martin et al. In fact, Martin et al. do not teach any isolated, recombinant polypeptides. The Examiner's reliance on inherency to support this rejection under 35 U.S.C. §102(b) is impermissible. In order to rely on inherency, the missing descriptive information must be present such that one skilled in the art would recognize the allegedly inherent disclosure. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949 (Fed. Cir. 1999). Each of the pending claims relies on SEQ ID NO: 2 as disclosed in the instant application. One of ordinary skill in the art at the time the instant invention was filed would not be able to recognize the presence or absence of polypeptides having an amino acid sequence of SEQ ID NO: 2 in the whole cell lysate taught by Martin et al. because it was not known at the time. As such, Martin et al. does not anticipate the claims 31, 39, 60, 62, and 65. Further, the Examiner's concern regarding the term "comprising" is misplaced. The isolated polypeptides encompassed by each of claims 31, 39, 60, 62 and 65 must include the amino acid sequence of SEQ ID NO: 2. Martin et al. does not teach or suggest the amino acid sequence of SEQ ID NO: 2, thus Martin et al. does not teach or suggest any polypeptides comprising the amino acid sequence of SEQ ID NO: 2. Further, given that Martin et al. does not teach or suggest the amino acid sequence of SEQ ID NO: 2, the Examiner's comments regarding the patentability of product by process claims are not applicable to the instant claims, the polypeptides of the instant invention are not anticipated or made obvious by Martin et al.

Given that no isolated, recombinant polypeptides disclosed or suggested by the OM preparations described in Martin et al. and that Martin et al. fails to teach or suggest the amino acid sequence of SEQ ID NO: 2, reconsideration of the rejection is respectfully requested.

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Conclusion

Applicant believes this response to be a full and complete response to all outstanding rejections in this application. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 61-67 and 69-73. As the application is believed to be in condition for allowance, Applicants respectfully request a Notice of Allowability. The Examiner is invited to contact the undersigned representative should any further issues arise

Respectfully submitted,

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Date: Feb. 28, 2005

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